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As of the date of this filing, no response has been received from the U.S. Border Patrol to Ms. Villalobos' administrative petition.

In her petition, Ms. Villalobos explained she was employed as a psychologist by D.I.F., a government entity in Tecate, Mexico and needs her car to travel to and from work and the other necessities of life. Her other car is unreliable and thus needs she his vehicle.

STATEMENT OF THE LAW

On August 23, 2002, the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) went into effect. One of the main elements of the statute provides for the what is often referred to as a Hardship Release, a provision for the release of property during the pendency of the forfeiture proceedings. The 'release' provisions are found in Title 18, United States Code, Section 983(f), which provides as follows:

(f) RELEASE OF SEIZED PROPERTY

- (1) A claimant under subsection (a) is entitled to immediate release of seized property if -
 - (A) the claimant has a possessory interest in the property;
- **(B)** the claimant has sufficient ties to the community to provide assurance that the property will be available at the time of the trial;
- (C) the continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;
- (D) the claimant's likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and
 - (E) none of the conditions set forth in paragraph (8) applies.

In her petition to the U.S. Border Patrol, Ms. Villalobos met all of the above requirements. She set forth and documented she is the registered owner of the vehicle. [18 U.S.C. § 981(f)(1)(A)] (See Exhibit "B"). She further established her community ties by explaining she is lawfully entitled to enter the United States with a visa, which she's had for 27 years. U.S.C. § 981(f)(1)(B)]. She also explained the continued possession by the government pending final disposition of forfeiture proceedings will cause substantial hardship to her for the following reasons. She needs her vehicle to travel to and from work. Additionally, she needs her vehicle for the ordinary necessities of life, including going to the

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grocery store, doctor's appointments, etc. [18 U.S.C. § 981(f)(1)(c)]. Finally, she demonstrated that likely hardship from the continued possession by the Government of the vehicle outweighs the risk the vehicle will be destroyed, damaged, lost or transferred if it is returned to her during the pendency of the proceedings. Insurance has always been maintained on the vehicle and will continue to be maintained should the vehicle be released. (See Exhibit "A" attached). [18 U.S.C. § 981(f)(1)(D)]. Nevertheless, the U.S. Border Patrol has failed to even respond to her Petition.

As noted above, in spite of Ms. Villalobos clearly demonstrated hardship arising from the seizure of the vehicle, U.S. Border Patrol has failed to return the release the vehicle. Congress has provided a remedy for such inaction. Title 18, United States Code, Section 983(f)(3)(A) provides:

If not later than 15 days after the date of a request under paragraph (2) the property has not been released, the claimant may file a petition in the district court in which the complaint has been filed or, if no complaint has been filed, in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

18 U.S.C. Section 983(f)(5) further provides:

The court shall render a decision on a petition filed under paragraph (3) not later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.

18 U.S.C. Section (f)(6) goes on to require the following:

If-

- (A) a petition is filed under paragraph (3); and
- (B) the claimant demonstrates that the requirements of paragraph (1) have been met, the district court shall order that the property be returned to the claimant, pending completion of proceedings by the Government to obtain forfeiture of the property. (emphasis added).

Ms. Villalobos has met all of the above requirements. She has filed the petition under 18 U.S.C. Sections 983(f)(1) and (2), she has demonstrated that the requirements of paragraph (f)(1) have been met. Under these circumstances the statute calls for the court ordered release of the vehicle to her during the pendency of the forfeiture proceedings.

If the court grants this petition, the court may enter any order necessary to ensure that the value of the property is maintained while the forfeiture action is pending, including (1) permitting the inspection, photographing, and inventory of the property; (2) fixing a bond in accordance with Rule E(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims; and (3) requiring the claimant

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to obtain or maintain insurance on the subject property. While it is petitioner's contention no bond is necessary in this case, she has no objection to permitting the inspection, photographing and inventory of the vehicle, nor requiring him to continue maintain insurance on the vehicle.

CONCLUSION

Ms. Villalobos needs her vehicle so she can drive to and from work, and the ordinary necessities of life. The U.S. Border Patrol's refusal to even rule on her Petition flies in the face of the intention of the statute, which was to provide redress for those with hardships. She has clearly demonstrated a need for the return of the vehicle..

For the foregoing reasons, it is respectfully submitted this court should order the release of Ms. Villalobos' vehicle to her during the pendency of administrative and/or judicial forfeiture proceedings.

Dated: June 6, 2008

Respectfully submitted,

NICHARD M. BARNETT

Attorney for Petitioner Alejandra Villalobos

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Law Offices of

RICHARD M. BARNETT

A Professional Law Corporation

COPY

105 WEST F STREET
4th FLOOR
SAN DIEGO, CALIFORNIA 92101
Tel: (619) 231-1182

Fax: (619) 233-3221 cmail:rmb-atty@pacbell.net

May 22, 2008

United States Border Patrol Asset Forfeiture Office 3752 Beyer Boulevard San Diego, CA 92173

> Re: Seizure of One 2002 Honda CRV Vin No. JHLRD68432C019149

To Whom It May Concern:

Please find enclosed the Seized Asset Claim Form, Hardship Petition and Election of Proceedings Form of Alejandra Villalobos in the above-referenced matter.

Please advise this office when the matter has been referred to the Office of the United States Attorney for the Southern District of California for the institution of judicial forfeiture proceedings.

Thank you in advance for your courtesy and attention to this matter.

Very truly yours,

Richard M. Barnett, Esq.

RMB:rb

enclosures

SEIZED ASSET CLAIM FORM

Seizure No. Unknown

Date of Seizure:

4-29-08

Place of Seizure:

Tecate Port of Entry, Tecate, California

Item Seized: One 2002 Honda CRV, Baja California License #41D3842

VIN JHLRD68432C019149

Registered Owner: Alejandra Villalobos

I hereby request that the Government file a Complaint for Judicial Forfeiture of the seized property described below. I have filled in all three parts, as required.

PART I

List all the items in which you claim an interest. Include sufficient information to identify the items, such as serial numbers, make and model numbers, tail numbers, photographs, and so forth. Attach additional sheets of paper if more space is needed.

One 2002 Honda CRV, Baja California License #41D3842, VIN JHLRD68432C019149

PART II

State your interest in each item of property listed above. Provide any documents that support your claim of interest, such as titles, registrations, bills of sale, receipts, and so forth. Attach additional sheets of paper if more space is needed.

I am the owner of the seized vehicle.

PART III (ATTESTATION AND OATH)

I attest and declare under penalty of perjury that the information provided in support of my claim is true and correct to the best of my knowledge and belief.

ALEJANDRA VILLALOBOS

Name (Print)

May 19, 2008

Date

Signature

A FALSE STATEMENT OR CLAIM MAY SUBJECT A PERSON TO PROSECUTION UNDER 18 U.S.C. 1001 AND/OR 1621 AND IS PUNISHABLE BY A FINE AND UP TO FIVE YEARS IMPRISONMENT.

HARDSHIP PETITION [18 U.S.C. Section 983(f)(1)]

Seizure No. Unknown

Date of Seizure: 4-2

4-29-08

Place of Seizure:

Tecate Port of Entry, Tecate, California

Item Seized: One 2002 Honda CRV, Baja California License #41D3842

VIN JHLRD68432C019149

Registered Owner: Alejandra Villalobos

I, ALEJANDRA VILLALOBOS, am an owner of the seized 2002 Honda CRV.

I petition for the release of the 2002 Honda CRV pursuant to Title 18, United States Code, Section 983(f)(1) based on the following facts:

- (A) I am an owner of the vehicle;
- (B) I have sufficient ties to the community to provide assurance that the vehicle will be available at the time of trial. I am lawfully entitled to enter the United States with a visa, which I have had for 27 years.
- (C) The continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to me for the following reasons. I am employed as a psychologist by D.I.F., a government entity in Tecate, Mexico. I need my car to travel to and from work and the other necessities of life. My other car is unreliable and thus I need this vehicle.
- (D) The likely hardship from the continued possession by the Government of the vehicle outweighs the risk the vehicle will be destroyed, damaged, lost or transferred if it is returned to me during the pendency of the proceedings. Insurance has always been maintained on the vehicle and will continue to be maintained should the vehicle be released.

I declare under penalty of perjury the foregoing is true and correct.

Executed this 19th day of May, 2008, at San Diego, California.

ALEJANDRA VILLALOBOS

Page 12 of 16

Law Offices of

RICHARD M. BARNETT

A Professional Law Corporation

COPY

105 WEST F STREET
4th FLOOR
SAN DIEGO, CALIFORNIA 92101
Tel: (619) 231-1182

Fax: (619) 233-3221 email:rmb-atty@pacbell.net

May 22, 2008

Office of Fines, Penalties and Forfeitures United States Customs and Border Protection 9495 Customhouse Plaza San Diego, CA 92154-7631

> Re: Seizure of One 2002 Honda CRV Vin No. JHLRD68432C019149

To Whom It May Concern:

Please find enclosed the Seized Asset Claim Form, Hardship Petition and Election of Proceedings Form of Alejandra Villalobos in the above-referenced matter.

Please advise this office when the matter has been referred to the Office of the United States Attorney for the Southern District of California for the institution of judicial forfeiture proceedings.

Thank you in advance for your courtesy and attention to this matter.

Very truly yours,

Richard M. Barnett, Esq.

RMB:rb

enclosure

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4-29-08

Place of Seizure:

Tecate Port of Entry, Tecate, California

Item Seized: One 2002 Honda CRV, Baja California License #41D3842

VIN JHLRD68432C019149

Registered Owner: Alejandra Villalobos

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PARTI

List all the items in which you claim an interest. Include sufficient information to identify the items, such as serial numbers, make and model numbers, tail numbers, photographs, and so forth. Attach additional sheets of paper if more space is needed.

One 2002 Honda CRV, Baja California License #41D3842, VIN JHLRD68432C019149

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State your interest in each item of property listed above. Provide any documents that support your claim of interest, such as titles, registrations, bills of sale, receipts, and so forth. Attach additional sheets of paper if more space is needed.

I am the owner of the seized vehicle.

PART III (ATTESTATION AND OATH)

I attest and declare under penalty of perjury that the information provided in support of my claim is true and correct to the best of my knowledge and belief.

ALEJANDRA VILLALOBOS

Name (Print)

May 19, 2008

Date

Signature

A FALSE STATEMENT OR CLAIM MAY SUBJECT A PERSON TO PROSECUTION UNDER 18 U.S.C. 1001 AND/OR 1621 AND IS PUNISHABLE BY A FINE AND UP TO FIVE YEARS IMPRISONMENT.

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4-29-08

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VIN JHLRD68432C019149

Registered Owner: Alejandra Villalobos

I, ALEJANDRA VILLALOBOS, am an owner of the seized 2002 Honda CRV.

I petition for the release of the 2002 Honda CRV pursuant to Title 18, United States Code, Section 983(f)(1) based on the following facts:

- I am an owner of the vehicle; (A)
- I have sufficient ties to the community to provide assurance that the vehicle will be available at the time of trial. I am lawfully entitled to enter the United States with a visa, which I have had for 27 years.
- The continued possession by the Government pending the final disposition of (C) forfeiture proceedings will cause substantial hardship to me for the following reasons. I am employed as a psychologist by D.I.F., a government entity in Tecate, Mexico. I need my car to travel to and from work and the other necessities of life. My other car is unreliable and thus I need this vehicle.
- The likely hardship from the continued possession by the Government of the vehicle outweighs the risk the vehicle will be destroyed, damaged, lost or transferred if it is returned to me during the pendency of the proceedings. Insurance has always been maintained on the vehicle and will continue to be maintained should the vehicle be released.

I declare under penalty of perjury the foregoing is true and correct.

Executed this 19th day of May, 2008, at San Diego, California.

JS44

CIVIL COVER SHEET

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(a) PLAINTIFFS	(SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)		DEFENDA	: .NTS	% 0	CN8 10H -5	1. PMAG: 28AA
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c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)			ATTORN	EYS (IF KNOWN)		•	
Richard M. Barnett 105 West F. Street, 4th Floor San Diego, CA 92101				· ·.		. •	
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Miller Act	315 Airplane Product Liability	Medical Malpractice		625 Drug Related Seizure		PROPERTY RIGHTS	430 Banks and Banking
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150 Recovery of Overpayment	330 Federal Employers'	Product Liability		630 Liquor Laws	1 -	830 Patent	460 Deportation 470 Racketeer Influenced and
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152 Recovery of Defaulted Student Loans (Excl. Veterans)		370 Other Fraud		690 Other		3 862 Black Lung (923)	850 Securities/Commodities
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Other Contract	360 Other Personal Injury	385 Property Damag Product Liability	e	730 Labor/Mgmt. Reporting & Disclosure Act		370 Taxes (U.S. Plaintiff	893 Environmental Matters
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210 Land Condemnation	441 Voting	510 Motions to Vac	ate Sentence	790 Other Labor Litigatio	, k	871 IRS - Third Party	895 Freedom of Information Act
220 Foreclosure	442 Employment	Habeas Corpus		79 L Empl. Ret. Inc.		26 USC 7609	900 Appeal of Fee Determination Under Equal Access to Justice
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